Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-507

FAIRFAX COUNTY WIDE CITIZENS ASSOCIATION, *et al.*,

Petitioners,

v.

COUNTY OF FAIRFAX, VIRGINIA, *et al.*,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Respondent Board of Supervisors, by and through its counsel, Frederic Lee Ruck, and Richard A. Golden, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Fourth Circuit's opinion in this case.

REFERENCE TO OPINION BELOW

Respondent Board of Supervisors adopts the opinion as set forth in "Appendix A" of Petitioners' Brief.

QUESTION PRESENTED

Should the Supreme Court grant a Writ of Certiorari to review a case involving an alleged litigation settlement agreement wherein one party has repudiated the agreement and the other party has subsequently forced a trial on the merits of the underlying dispute?

COUNTER-STATEMENT OF THE CASE

The respondent Board adopts as accurate, the opinion set forth on pages 1a through 14a of the Petitioners' Petition.

In addition, respondent Board submits that after the Court of Appeals rendered its opinion on March 6, 1978, the following occurred:

1. The matter was remanded to the District Court. See p. 6, Petitioner's Brief.

2. The District Court held a hearing in late March, 1978, and allowed the petitioners an opportunity to dismiss, without prejudice, their action in that court and thus permit them to proceed to State court to enforce their alleged settlement agreement.
3. Petitioners rejected the opportunity to dismiss their suit, and proceeded, in accordance with the provisions of the decision of the Court of Appeals, to try their underlying case on the merits. Trial was held on July 10, 1978. No decision has been rendered. See p. 6, Petitioners' Brief.
4. Petitioners filed their present Petition for a Writ of Certiorari.

REASONS FOR DENYING THE WRIT

Further Appeal is moot because:

A. Both parties have rejected the settlement agreement.

1. Respondent rejected it in 1975 (See p. 5a of Petitioners' Petition).

2. Petitioners rejected it in 1978 by declining to dismiss the underlying cause of action and forcing the Respondent to defend the case on its merits at the July 10, 1978 trial. See, e.g., Buck's Stove & Range Co. v. American Federation of Labor, 219 U.S. 531, 31 S.Ct. 472, 55 L.Ed. 345 (1911).

B. Petitioners have accepted the benefits of the decision and judgment of the Court of Appeals of March 6, 1978. Particularly, the Court of Appeals gave the Petitioners an opportunity to have the 1972 dismissal set aside pursuant to Fed. R. Civ. P. 60(b)6, and have the case brought to trial. Petitioners have accepted the benefits of the Court of Appeals Judgment and have forced the Respondents to trial on the merits. By forcing the Respondents to a trial on the merits, they have rejected the alleged "settlement agreement," and they can no longer claim that the parties have "settled" the matter. See, e.g., Chicago Great Western Ry. Co. v. Beecher, 150 F.2d 296, cert. denied, 326 U.S. 781, 66 S.Ct. 339, 90 L.Ed. 473 (1946).

CONCLUSION

Respondent Board of Supervisors prays that this court enter an appropriate order denying a Writ of Certiorari.

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October 20, 1978